

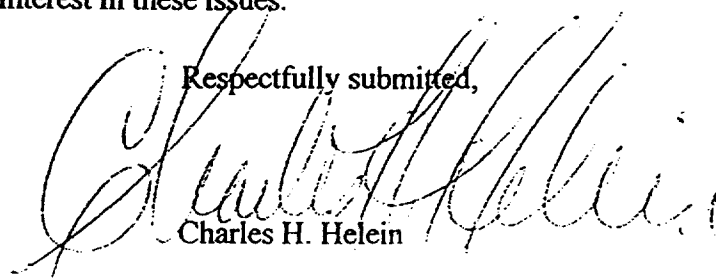
September 18, 1997

Page 3

statements and an affidavit detailing sorry experiences in the trenches of the competitive marketplace. The Committee continues to collect such reports and, after investigation, attempts to obtain the cooperation of end users to allow the Committee to bring these instances to the attention of the appropriate government officials. As the Committee obtains more such information, we will make it available to all concerned.

We will complete a more detailed analysis shortly and bring your office up-to-date as warranted. We appreciate the interest in these issues.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read "Charles H. Helein".

Charles H. Helein

Enclosure

smh\530\missrspn.ltl



RECEIVED AUG 18 1997



The State of South Carolina .  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 15, 1997

Charles H. Helein, Esquire  
Helein & Associates, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102

Re: Action Required On Payphone Competition -  
Regional Bell Operating Companies


Dear Mr. Helein:

Attorney General Condon's Office is in receipt of your recent correspondence regarding the above-referenced matter. We appreciate your concerns and thank you for taking the time to contact us.

At the present time, this Office has made arrangements with the South Carolina Department of Consumer Affairs to have that agency make a preliminary inquiry regarding the type of claim or question you have raised. As you may be aware, Attorney General Condon has placed a high priority on the handling of matters related to the criminal justice system in this Office. The Consumer Affairs office is well equipped to handle the bulk of consumer matters. In the event that agency makes a determination that the Attorney General's Office should be contacted due to possible criminal involvement or other legal issues which are not within their jurisdiction, they will contact us.

I am taking the liberty of forwarding your correspondence to the Department of Consumer Affairs. Additionally, you may contact that agency directly at P. O. Box 5757, Columbia, South Carolina 29250-5757. I hope that this will be of some assistance to you. Again, I appreciate your taking the time to contact us. Should you have additional questions, please feel free to contact our Office at (803) 734-3970.

Sincerely,

  
C. Havird Jones, Jr.  
Senior Assistant Attorney General

CHJJr/bvc





THURBERT E. BAKER  
ATTORNEY GENERAL

Department of Law  
State of Georgia

RECEIVED OCT 17 1997

40 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300

October 14, 1997

WRITER'S DIRECT DIAL:  
(404) 656-3337  
FAX (404) 651-9148

Charles H. Helein  
Helein & Associates, P.C.  
8180 Greensboro Drive  
Suite 700  
McLean, Virginia 22102

Dear Mr. Helein:

Thank you for your correspondence regarding BellSouth's treatment of rights of end users to select interexchange carrier of their choice to service payphones located on their premises. I appreciate your bringing this matter to my attention. In the State of Georgia, the Public Service Commission is vested with the authority to regulate telecommunication activities. This office acts as legal counsel to the Commission. For that reason, I have taken the liberty of forwarding your letter to the Commission for its review by cover of a copy of this letter to you. You may send all future correspondence directly to the Commission at the address shown below:

Whitney Peters  
Georgia Public Service Commission  
Room 170  
244 Washington Street  
Atlanta, Georgia 30334

I hope that I have been of assistance to you.

Sincerely,

ALAN GANTZHORN  
Senior Assistant Attorney General

AG/klm

cc: Whitney Peters  
Georgia Public Service Commission



09/18/1997 21:07 602-675-8112  
SEP 18 '97 14:17 FR AMERITECH-DESOLE  
09/16/97 15:00 312 526 8505  
SEP: -16' 97 (TUE) 11:45 AMERITECH PAY PHONE

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P. 003

**Ameritech**

30 South Wacker Drive  
Chicago, IL 60606  
Office 312/750-5120

847-248-4876  
847-248-6013 fax  
Allen H. Baker  
Counsel

September 9, 1997

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

**Re: Payphone interexchange carrier selection  
(CC Docket 96-128)**

Dear Sir:

A letter dated July 30, 1997 (hereafter called the complaint) from Charles H. Helein, Esq., written on behalf of unnamed independent pay telephone providers, addressed to the Enforcement Task Force, Enforcement Division, Common Carrier Bureau, complains about "strong-arm tactics" employed by the payphone operations affiliated with BellSouth and Ameritech in regard to changes in the selection of the presubscribed interexchange carrier ("PIC") at their payphones. This letter responds to the complaint only insofar as it pertains to Ameritech and shows that even if its allegations were true (which they are mostly not), they would fail to establish any violation of the Communications Act or of any other law or regulation.<sup>1</sup>

<sup>1</sup> Just as the complaint does not specify any section of the Act that has been violated, it also fails to point to any jurisdictional basis under which a complaint such as this might be filed. Section 208, for example, does not suffice for this purpose, because it applies only to violations of the act by a common carrier, and the definition in Section 3(44) of the Act makes clear both (1) that the providing of

(Footnote continued . . .)

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"the same right that independent payphone providers have to negotiate with the location provider" concerning the IXC, as well as the ability "to select and contract with" the IXC directly. In applying this new provision, the Commission has expressly "decline[d] to place restrictions on the BOCs' ability to negotiate for the selecting and contracting of inter-LATA carriers presubscribed to their payphones,"<sup>5</sup> and it has also said that "any restrictions on their [i.e., the BOCs'] ability to aggregate inter-LATA volume, or to direct interLATA traffic to a particular carrier, are unwarranted."<sup>6</sup>

Against this unambiguous background, the present complaint cannot stand. First of all, the parties who are complaining here are neither IXCs nor premises owners. Instead, they purport to be Ameritech's head-to-head competitors for the business of the very same premises owners they accuse Ameritech of abusing. Such parties plainly lack legal standing to complain about PIC changes at Ameritech payphones. If there are any pay telephone premises owners who object to the way Ameritech handles PIC choices, they can and surely will take their payphone business straight to the complainants. There is no need for regulatory intervention in cases such as this where — if such exaggerated allegations as these were true — the natural forces of competition can provide an swift and effective remedy.<sup>7</sup>

Moreover, the complaint would be without merit even if brought in the names of the right parties. The new law gives the BOCs the right to negotiate with their premises owners as to the PIC, and accordingly Ameritech does recommend the choice of LDDS at Ameritech payphones (although Ameritech will gladly accept other PICs if the premises owner

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(... Footnote continued)

Section 276(b)(3) or "any agreement with the location provider" (i.e., between the BOC and the location provider) under Section 276(b)(1)(D).

<sup>5</sup> Payphone Order, *supra* note 2, at ¶ 240.

<sup>6</sup> *Id.* (footnote omitted).

<sup>7</sup> At some points the complaint tries to deal with its own lack of standing. On page 3, for example, it is claimed that Ameritech's "purpose" is "to gain unfair advantage over IFSPs." But there is nothing to explain how such a purpose could be accomplished through PIC changes.



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prefers). Furthermore, the new Ameritech form of agreement that the complaint attacks is in full compliance with Section 276.<sup>8</sup> First of all, its provisions that relate to existing carriers, which the complaint particularly assails, are intended to prevent the possibility of inadvertent conflict with pre-1996 agreements, which, as already noted, are expressly preserved by law.<sup>9</sup> Second, if and when the premises owner signs the agreement, the result is the natural outcome of the negotiation process that Section 276 authorizes: an agreement by the premises owner not to change the payphone or the PIC for the term of the agreement, in return for the local and long-distance commissions the premises owner will receive over that term.<sup>10</sup>

Finally, the complaint's attempt to label these carrier choices at Ameritech pay telephones as "slamming" is without merit because it hopelessly confuses the differences between a premises owner and an end user and between the legal obligations of a LEC and its payphone affiliate. "Slamming" occurs only when someone (usually an IXC) submits a PIC choice to the LEC without authority from the person entitled to choose the IXC. Under Section 276, however, the premises owner now is not so entitled; it cannot be "slammed" because it is no longer the party with the authority to submit PIC changes directly to the LEC.<sup>11</sup> Instead, the premises owner must negotiate with the LEC payphone affiliate concerning who will be the PIC.

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<sup>8</sup> In the case of existing Ameritech payphones who have not yet signed the new agreement, Ameritech — although not required to do so under Section 276 — continues to accept PIC changes direct from premises owners or from IXCs by means of a Letter of Agency in the same form as formerly accepted by the Ameritech LECs at Ameritech payphones.

<sup>9</sup> See note 4, *supra*.

<sup>10</sup> Thus the presence of a signed new agreement would account for such a conversation as that related on page 3 of the complaint. Ameritech personnel state that that conversation never occurred. But if the premises owner had already signed an agreement, and the agreement was still in force, Ruth would have been 100% right to say that it was too late to change the PIC.

<sup>11</sup> Since Section 276 grants to LEC payphone operations "the same right that independent payphone providers have," the LECs now must look to their payphone affiliates as the person authorized to make PIC changes at LEC payphones, just as they have always accepted PIC changes directly from independent payphone providers rather than the premises owner or the IXC.

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847 534 7752 IU 16029900819

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Moreover, the LEC-affiliated payphone operations, who are not common carriers and who are entitled to be treated just like other payphone companies, are clearly not required under the plain meaning of Section 276 to accept PIC changes blindly from their premises owners in the same neutral, uninvolved way that the LECs themselves must accept PIC changes from their end users. Otherwise, Judge Greene's old rule would be restored in its entirety, contrary to the plain intent of Congress. Furthermore, the pay telephone premises owner, unlike the typical "slamming" victim, is not the party who will have to pay the long distance charges at the payphone, so the economic injury invariably associated with "slamming" is absent here. Thus the notion of "slamming" is foreign to the issues involved here, and those aspects of the complaint should be rejected.

\* \* \* \*

Inasmuch as the complaint fails to establish any violation of any law or regulation on the part of Ameritech, no further action should be taken in regard to it.

Very truly yours,





cobbled together as part of a last stand in a very determined effort to keep BellSouth out of long distance.

Payphones. The Independent Payphone Service Providers for Consumer Choice ("IPSPCC") raise several allegations focusing on BellSouth Public Communications, Inc. ("BSPC"), an indirect wholly-owned subsidiary of BST. Each of these contentions lack merit.

First, neither BST nor BSPC has discriminated against IPSPCC members or undertaken any unjust or unreasonable marketing practice that violates sections 201(b) or 202(a) of the Act. The BellSouth materials attached to the IPSPCC's comments nowhere suggest BellSouth or BSPC sought to interfere with existing contracts between location providers and IPSPCC members by "suggest[ing] that the Commission's rules require customers to reevaluate their choice of long distance company." IPSPCC at 5. In fact, the opposite is true. The contractual materials cited by the IPSPCC (at 5) clearly state that if the location provider has a contract with an entity other than BellSouth, that contract is to run its term unaffected. See IPSPCC Ex. A at 2, B.

Where sufficient information has been provided, BSPC also has fully investigated the allegations listed in Appendix D to the IPSPCC's comments, regarding three-way calls between BSPC, location providers, and interexchange carriers. These allegations are simply false. Shinholster Aff. ¶ 3.

Nor do BSPC's contractual or publicity materials "suggest that BellSouth has control" over any interexchange carrier. IPSPCC at 5. The materials filed by IPSPCC explicitly indicate that the location provider has no existing contract and is simply designating BSPC as its agent for the purpose of selecting the primary interexchange carrier. See Implementation of the Pay

Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541, 20662, ¶ 243 (1996) ("Report and Order") (noting that section 276 of the 1996 Telecommunications Act granted Bell company payphone service providers "the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier"). The BSPC contractual and publicity materials comport with both the spirit and the letter of the Report and Order. Furthermore, the contractual materials filed by IPSPCC have been superseded. Shinholster Aff ¶¶ 3-4. The current contractual materials explicitly state that BSPC will not interfere with existing contracts between carriers and location providers.

The IPSPCC's claims regarding fees BSPC charges to certain location providers are addressed in BellSouth's Application. BellSouth Br. at 98 n.62. IPSPCC also alleges that BSPC has engaged in "slamming" — the unauthorized changing of a payphone's primary interexchange carrier. IPSPCC at 11. BellSouth has investigated all of IPSPCC's allegations to the best of its abilities, and found no evidence of slamming.

Finally, the IPSPCC contends that BSPC "has a financial relationship with TelTrust that violates the prohibition against BOC provision of in-region interLATA service." Id. at 12. BSPC has simply negotiated a standard agreement with TelTrust under which BSPC will receive commissions based on the amount of traffic BSPC has aggregated. See Shinholster Aff ¶ 3.

Marketing practices. MCI accuses BellSouth of improperly attempting to retain customers who had already decided to transfer their local telephone service to MCI. See MCI at 84. MCI claims that BellSouth, upon receiving transfer orders from MCI for certain customers, has improperly sent "retention letters" urging these customers to cancel their orders. See id. Contrary to this allegation, the purpose of these letters was to ensure that customers were not



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc.  
and BellSouth Long Distance, Inc., for  
Provision of In-Region, InterLATA  
Services in South Carolina

CC Docket No. 97-208

AFFIDAVIT OF MELVIN R. SHINHOLSTER

1. My name is Melvin R. Shinholster. I am a manager with BellSouth Public Communications, Inc. (BSPC) located at 75 Bagby Drive, Homewood, Alabama. At the request of counsel for BellSouth, I have investigated the claims submitted by IPSPCC members or representatives included in Exhibit D of the Comments submitted on behalf of the IPSPCC and have prepared this affidavit discussing the results of this investigation.
2. The common points made by the IPSPCC appear to be about the practices of the BSPC Business Office when an interexchange carrier calls the BSPC Business Office with the location provider on the line.
3. The claims fall into five specific categories:
  - A.) Rudeness on the part of BellSouth Public Communications Service Representatives with IPSPCC members.The procedures outlined for service representatives involved in a three-way conversation with interexchange carriers and customers provide for the service representative to:



- o Cooperate with all parties on the line. The service representative will make every effort to handle the request both professionally and promptly.
- o After announcing payphone numbers and customer, IXC representative is allowed to stay on line as an observer only.

B.) Service representatives refuse to make PIC changes because the customer was under a contract with Teltrust.

In a three-way conversation, the BellSouth Public Communications service representative is under instructions not to change the PIC at that time if the customer's account is shown to be under contract and Teltrust is shown to be the presubscribed carrier, thus indicating that BSPC has been authorized to select the PIC on behalf of the location provider. Where a contract does exist, the BellSouth Public Communications service representative is instructed to refer the contact to sales in order that the account representative can explain the terms of the existing contract to the customer since the service representative does not have access to the contract at his terminal. A PIC change may have an effect on the contract terms. The account representative is to contact the customer and explain the terms of the agreement with BSPC. If the customer requests a copy of the contract one will be faxed or mailed to him.

C.) The IPSPCC claims that BellSouth Public Communications service representatives will not answer questions about the contract when asked and

would only state that someone from sales would contact the customer to discuss the existing contract.

My investigation revealed that the BellSouth Public Communications service representative is following established procedures by not discussing the contract with anyone other than the customer of record. Guidelines state that the interexchange carriers can establish a three-way conversation with the customer, introduce themselves and the customer, give pertinent information to the service representative and then hand the conversation over to the customer. The interexchange carriers can then choose to drop from the conversation or remain on the line to observe the call. They are not allowed to participate in the conversation once the interexchange carrier has handed the customer off to the service representative.

D.) The statements claim that the BellSouth Public Communications service representatives do not change the PIC upon request as they once did.

After April 1, 1997 BellSouth Public Communications, Inc. became a separate subsidiary of BellSouth and now operates as a certified Independent Payphone Provider in a nine - state area. As an Independent Payphone Provider, we maintain our own business office separate from the IPP services which are offered by the BellSouth Telecommunications Inc. Vendor Payphone Center. The BellSouth Public Communications service representatives are responsible for ordering access lines from Vendor Payphone Centers of the Local Exchange

Companies (including BellSouth Telecommunications) and maintaining the customer record data base for our public pay telephones just as other PSPs do for their payphones. BSPC service representatives are different from BellSouth Telecommunications Inc. service representatives who negotiate service requests for access lines. BellSouth Public Communications, Inc. has specific procedures for handling three-way calls with interexchange carrier representatives and customers as outlined in the BSPC office procedure manuals. Prior to the time that BSPC was authorized to select the interexchange carrier on behalf of the location provider, a PIC change request would have been processed at the time of the three-way call. Since April 16, 1997, when BSPC was authorized to contract with the location provider to select the interexchange carrier, this procedure was changed to that set forth in 3.B.

4. Finally, I investigated the specific allegations listed in Appendix D of the IPSPCC's comments. In some instance (e.g., Mr. Oldham), the IPSPCC's allegations are so vague as to make any type of investigation impossible.

In two other instances (Johnson's Game Room, Sal & Judy's), the IPSPCC fails to recognize that the payphones at issue subscribe to BSPC's Business Payphone Service. As explained in BellSouth's South Carolina Section 271 filing, the surcharge on such phones is entirely consistent with this Commission's payphone orders.

In another instance (B&B Spirits), the IPSPCC alleges that BSPC improperly refused to effectuate a PIC change requested by a location provider. But according to BSPC's records, B&B Spirits -- the party identified on the three-way call as the location

provider -- was in fact not listed as the person authorized to select the interLATA carrier for that phone. Following the procedures described above, the BSPC representative thus refused to perform the PIC change. In any event, since this phone is not currently presubscribed to the BellSouth-preferred carrier, IPSPCC is entirely wrong in suggesting that BSPC would have an incentive to not perform a proper PIC change request.

Finally, in virtually all the other incidents identified by the IPSPCC, the location providers have appointed BSPC as their agent to act on their behalf in negotiating with interexchange carriers. Accordingly, whenever a location provider and an IXC requested a PIC change for any of these phones, the BSPC representative followed the procedures described above. The IPSPCC also mistakenly implies that BSPC has consistently failed to make the requested PIC change. For instance, the IPSPCC suggests that BSPC has attempted to "sell long distance" to Floyd Oil Company. In fact, however, that payphone is still currently presubscribed to NOS.

To the best of my knowledge, in dealing with requested PIC changes BSPC has followed the procedures described herein.

Under penalty of perjury, I hereby swear that the foregoing is true and correct to  
the best of my information and belief.

Melvin R. Shinholster

Melvin R. Shinholster

Manager

BellSouth Public Communications

Subscribed and sworn to before me this  
13th day of November, 1997.

Sharon L. Greer

Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Feb. 14, 2001.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.